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Missing persons

Report of the Secretary-General

Summary

In its resolution 69/184 on missing persons, the General Assembly requested the Secretary-General to submit to the Human Rights Council at its relevant session and to the Assembly at its seventy-first session a comprehensive report on the implementation of the resolution, including relevant recommendations. The present report is submitted pursuant to that request.

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I. Introduction

1. In its resolution 69/184 on missing persons, the General Assembly requested the Secretary-General to submit to the Human Rights Council at its relevant session and to the Assembly at its sixty-ninth session a comprehensive report on the implementation of the resolution, including relevant recommendations. The present report was prepared in accordance with that resolution. The report follows the same structure as the previous report of the Secretary-General on missing persons (A/69/293) and covers the period between 1 July 2014 and 30 June 2016. To prepare the report, input was sought from Member States, international and regional organizations, national human rights institutions and non-governmental organizations.[1] The report draws also on a diverse range of public sources.

2. In resolution 69/184, the General Assembly focuses primarily on the specific issue of missing persons in connection with international or non-international armed conflicts. However, persons go missing in many other circumstances, including situations of violence, insecurity, organized crime, disaster and migration. Enforced disappearance, which is a human rights violation and crime under international law, also results in missing persons. Initiatives taken by Member States and intergovernmental and other organizations to address the issue of persons who are unaccounted for are not necessarily defined by the cause or context in which the persons go missing. As in previous reports of the Secretary-General, the present report therefore also reflects information received regarding the implementation of measures to address the issue of persons who are unaccounted for in contexts other than armed conflict, to the extent that they can be relevant for missing persons in connection with armed conflict.

II. International legal and institutional framework

3. In his previous reports on missing persons, the Secretary-General set out the international legal framework applicable to the issue of missing persons, drawing on international human rights law and international humanitarian law (see A/67/267, paras. 4-7, and A/69/293, paras. 4-6). Those reports also set out the way in which the right to the truth underpins the obligations of States to determine the fate and whereabouts of persons who are unaccounted for. In a new fact sheet of the International Committee of the Red Cross (ICRC), "Missing persons and their families",[2] published in 2015, the obligations of States to prevent people from going missing, to search for missing persons and to deal with the consequences of such events are clearly delineated.

4. The legal framework includes the International Convention for the Protection of All Persons from Enforced Disappearance. As at 1 July 2016, there were 52 States parties to the Convention. Since the previous report of the Secretary-General,

[1] Contributions were received from Algeria, Argentina, Azerbaijan, Bahrain, Colombia, Cyprus, El Salvador, Georgia, Greece, Guatemala, Kuwait, Montenegro, Niger, Panama, Senegal, Serbia, Spain, Switzerland and Ukraine, and from the Offices of the Ombudspersons of Ecuador and Moldova, the Ariel Foundation International, the International Centre for Justice and Human Rights, the International Committee of the Red Cross and the International Commission on Missing Persons.

[2] Available from https://www.icrc.org/en/document/missing-persons-and-their-families-factsheet.

10 States (Belize, Greece, Italy, Malta, Mongolia, Niger, Slovakia, Sri Lanka, Togo and Ukraine) have acceded to or ratified the Convention. In the submissions received following the call for contributions to the present report, several States (El Salvador, Senegal and Switzerland) provided an update on their efforts to become parties to the Convention.[3]

5. The legal framework for issues pertaining to missing persons also includes regional agreements, instruments and texts. For example, in a thematic report of March 2016, the Commissioner for Human Rights of the Council of Europe provided an overview of the situation regarding missing persons and victims of enforced disappearances in Europe, including an overview of applicable European standards and mechanisms.[4]

6. In December 2014, Belgium, Luxembourg, the Netherlands, Sweden and the United Kingdom of Great Britain and Northern Ireland signed the Agreement on the Status and Functions of the International Commission on Missing Persons, to establish the Commission as an international organization, with its headquarters in The Hague. The Agreement was subsequently also signed by Chile, Cyprus, El Salvador and Serbia. The purpose and functions of the Commission are set out in article 2 of the Agreement as to secure the cooperation of Governments and other authorities in locating persons missing as a result of armed conflicts, human rights abuses, natural and man-made disasters and other involuntary reasons and to assist them in doing so.

7. On 27 January 2016, the Security Council held an Arria-formula open debate on the global challenge of accounting for missing persons, including presentations by the United Nations High Commissioner for Human Rights, the International Commission on Missing Persons, the International Center for Transitional Justice, the Mayor of Lampedusa, Italy, and the Executive Director of a Mexican non-governmental organization, Ciudadanos en Apoyo a los Derechos Humanos. At the debate and in its contribution to the present report the Commission proposed the establishment of an inter-agency committee on missing persons to coordinate efforts with international organizations, civil society and scientific organizations, as well as Governments, to address the broad range of circumstances in which persons go missing.

III. Measures to prevent persons from going missing

8. In resolution 69/184, the General Assembly stresses the importance of measures to prevent persons from going missing in connection with armed conflict. Preventive measures should ideally be adopted in peacetime to ensure that they are in place before they may be required (see A/67/267, para. 8).

A. Enacting national legislation

9. It is critical that, in dealing with the issue of missing persons, States develop a national legal framework that incorporates their obligations under international

[3] The Ombudsperson of Moldova reported also that a feasibility study for the ratification of the Convention had been prepared in the country.

[4] Available from https://wcd.coe.int/ViewDoc.jsp?p=&Ref=CommDH/IssuePaper(2016)1&Language=lanEnglish&direct=true.

humanitarian law and international human rights law. This is important from both a preventive and a reactive perspective, as it can help to ascertain the fate of missing persons, ensure the comprehensive collection, protection and proper management of information and realize the right to the truth of victims' families and provide them with the necessary support. National legislation should provide appropriate regulatory frameworks for data collection and protection. Personal data should be collected and processed lawfully and in compliance with international human rights law, including the right to privacy.

10. In its fact sheet entitled "Guiding principles/Model Law on the missing",[5] ICRC proposes and explains model legislative provisions to be used by States as guidance in the drafting of legislation for the protection of missing persons and the prevention of such situations. In its submission for the present report, ICRC also reported that it has continued to work with a number of States on draft legislation on issues relating to missing persons, including in Guatemala, Lebanon, Nepal, Peru and Ukraine. In Guatemala, for example, Bill 3590 is intended to provide families of victims of the armed conflict with solutions regarding the legal status of missing relatives. In Ukraine, a draft law on the prevention of disappearance and facilitation in tracing the missing was prepared under the auspices of the Ministry of Justice.[6] In Nepal, ICRC published a report entitled "Civil legal issues related to the families of the missing in Nepal", in which the legal and administrative issues faced by families of the missing are highlighted and a set of recommendations proposed.

11. In other countries, ICRC continued to conduct and support studies on the compatibility of domestic law with international humanitarian law as it affects the issue of missing persons. In addition to those countries listed in previous reports (see A/67/267, para. 11, and A/69/293, para. 9), such a study is now also being carried out in Brazil. In its submission, Georgia reported that its 2014-2015 international humanitarian law national action plan included an analysis of its legislative framework regarding the issue of missing persons, to be carried out with ICRC. Furthermore, following the thirty-second International Conference of the Red Cross and Red Crescent, held in Geneva in December 2015, five States (Austria, Belgium, Costa Rica, Guatemala and Peru) have officially pledged to take measures to guarantee and protect the rights of missing persons and their families.

12. In several submissions received for the preparation of the present report, information was provided regarding the adoption of legislation to deal with issues pertaining to missing persons and their families. Colombia, for example, reported that, in 2015, the Government issued decree 303 regarding measures to contribute to the localization, identification, exhumation and commemoration of victims of enforced disappearance. The decree creates a databank of genetic profiles of the disappeared. It also encompasses specific measures to provide economic and psychological support to the relatives of disappeared persons during the process of return of the remains. In December 2015, the Government of Mexico submitted to the Senate a draft general law for the prevention and sanctioning of crimes related

[5] Available from https://www.icrc.org/en/document/guiding-principles-model-law-missing-model-law.

[6] See also OHCHR, report on the human rights situation in Ukraine, 16 February to 15 May 2016, available from www.ohchr.org/Documents/Countries/UA/Ukraine_14th_HRMMU_Report.pdf, para. 28. It is noted that, while the draft law marks an important step toward streamlining national procedures and the implementation of international law, it requires further development, such as the establishment of a centralized entity or institution dealing with missing persons.

to disappearance. In Peru, in May 2016, Congress approved a draft law on the tracing of disappeared persons, which covers the period of armed conflict from 1980 to 2000. It confers on the Ministry of Justice and Human Rights and on the Office of the Prosecutor a central and leading role in the tracing of disappeared persons, and establishes a national register of disappeared persons.[7] In June 2016, the Government of Sri Lanka approved a cabinet paper, following which draft legislation has been tabled in Parliament to grant a certificate of absence to the relatives of missing persons.

B. Other preventive measures

13. In time of armed conflict, the production and proper use of means of identification by the armed and security forces play an important role in preventing persons from going missing. States have the primary responsibility for the production and compulsory use by their armed forces of such items as identification tags. International humanitarian law also requires the establishment of national information bureaux and grave registration services. National information bureaux can be found in Armenia, Azerbaijan, Iran (Islamic Republic of), Iraq and the United Kingdom, for example.

14. Ensuring appropriate training of and oversight over security and law enforcement officials is another example of a preventive measure, as it can prevent misconduct leading to persons going missing and ensure adequate responses when such situations occur. In its contribution to the present report, Bahrain highlighted the adoption of a general strategy to develop its security apparatus, in an effort to ensure greater respect for human rights.

IV. Measures to clarify the fate and whereabouts of missing persons

15. In resolution 69/184, the General Assembly reaffirms the right of families to know the fate of their relatives reported missing in connection with armed conflicts, and calls upon all States that are parties to an armed conflict to take all necessary measures, in a timely manner, to determine the identity and fate of persons reported missing. The fate and whereabouts of missing persons should be determined on the basis of transparency, accountability and public involvement.

A. Tracing and restoration of family links

16. ICRC reported that it continued its extensive tracing activities, including the collection of information about persons unaccounted for and the circumstances under which they had gone missing. Updated lists of missing persons that have been reported to ICRC in a given context can be shared in the framework of a confidential dialogue with the parties concerned, or published and widely distributed among authorities and the public at large for the use of all stakeholders, in line with instructions from and with the consent of the sources of information. The work also involves maintaining a dialogue and making representations to the

[7] www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20046&LangID=E.

relevant authorities or armed groups to determine the whereabouts of missing persons, provided that the families of the missing persons have made a request to that effect or have agreed to such intervention.

17. ICRC and national Red Cross and Red Crescent societies assist with the maintenance and restoration of links between family members during conflict and other emergencies, which involves tracing relatives, exchanging family messages, reuniting separated families and seeking to clarify the fate of those who remain missing. ICRC has expanded the scope of its work in relation to the restoration of family links to persons separated as a consequence of migration, in recognition of their particular vulnerability in that respect. Other organizations also continue to be involved in the tracing and restoration of family links, including the Office of the United Nations High Commissioner for Refugees (OHCHR) and the International Organization for Migration. The United Nations Children's Fund continues to work to assist unaccompanied children, for example through the introduction of RapidFTR, a mobile phone application and data storage system for expediting the process of family tracing and reunification during and after crises.

B. Coordination mechanisms

18. Parties to a former conflict may agree to take specific measures under the auspices of a neutral actor. One example is setting up coordination mechanisms to exchange information; provide mutual assistance in locating and identifying missing persons and in the recovery, identification and return of human remains; and keep family members informed about progress in determining the fate and whereabouts of missing persons.

19. In Cyprus, the Committee on Missing Persons, which is composed of a Greek Cypriot member, a Turkish Cypriot member and a member from the United Nations, continued its forensic recovery and identification activities, with forensic advice from ICRC and technical assistance from the Argentine Forensic Anthropology Team, a non-governmental organization. As at 31 May 2016, the Committee had excavated 1,060 sites located across the island and exhumed the remains of 1,111 missing persons. Of those exhumed, 641 have been identified and returned to their families. The number of Greek Cypriots still missing is estimated at 1,016 and the number of Turkish Cypriots still missing at 344.[8] The Secretary-General has previously underscored that, in the light of the advanced age of both relatives and witnesses, it is critical that the Committee be given the means and the information required to accelerate its work.[9] Cyprus expressed similar concerns in its contribution to the present report.

20. Efforts to locate and identify missing persons in Kosovo[10] have been carried out primarily by the United Nations Interim Administration Mission in Kosovo and, since 2009, the European Union Rule of Law Mission in Kosovo, in cooperation with ICRC and the International Commission on Missing Persons. The Working

[8] See also www.cmp-cyprus.org/facts-and-figures/.

[9] See the report of the Secretary-General on the United Nations Operation in Cyprus (S/2016/11), para. 39. See also OHCHR report on the question of human rights in Cyprus (A/HRC/31/21), paras. 12-19.

[10] Reference to Kosovo should be understood in full compliance with Security Council resolution 1244 (1999) and without prejudice to the status of Kosovo.

Group on Missing Persons, chaired by ICRC and bringing together representatives of the authorities in Belgrade and Pristina, continued its work to account for missing persons. According to information received from ICRC, of the 4,381 cases that were closed as at April 2016, in 1,373 the persons were located alive. It was estimated that the number of persons still unaccounted for stood at 1,665.[11] The total number of missing persons related to the 1998-1999 events is estimated at 6,046.

21. In Croatia, bilateral exchange of information pertaining to missing persons between Croatia and Serbia was ongoing through a working group mechanism in which ICRC and the International Commission on Missing Persons participate as observers. In its contribution to the present report, Serbia reported that arrangements had been made for concrete mechanisms in view of future exchange of data and information aimed at the further harmonization of lists of missing persons. Arrangements were also made for joint field reconnaissance, exhumations and identifications. In addition, Serbia reported that it had supported regional meetings organized by the Commission to prepare a joint list of missing persons in the region and to promote bilateral and multilateral cooperation.

22. The tripartite coordination mechanism set up by the authorities of Georgia and the Russian Federation and the de facto "authorities" in South Ossetia, Georgia, to exchange information and clarify the fate of persons unaccounted for during and after the hostilities of August 2008, met eight times between February 2010 and November 2013, resulting in the exhumation of 14 sets of human remains, of which six were identified and handed over to their families. After a two-year gap, the ninth meeting took place in February 2016, reviving the discussions on the clarification of the fate and whereabouts of a total of 183 persons still unaccounted for. In its submission for the present report, Georgia reported that it also continued to hold regular meetings regarding the issue of missing persons in the context of the Joint Incident Prevention and Response Mechanism, which is mediated by the Organization for Security and Cooperation in Europe and the European Union Monitoring Mission and involves the Georgian and Russian authorities as well as the de facto "authorities" in South Ossetia, Georgia.

23. A similar mechanism, in relation to the conflict in Abkhazia, Georgia, from 1992 to 1993, which was established at the end of 2010, met for the eighth time in December 2015, while its forensic working group met 11 times in total. The dialogue led to the exhumation of 64 sets of human remains in 2013 and an additional 98 sets in 2014 and 2015. To date, 81 bodies have been identified and handed over to the families. Search and recovery of human remains was planned for three additional sites for 2016.

24. The Independent Commission for the Location of Victims' Remains, established in 1999 by an intergovernmental agreement between the Republic of Ireland and the United Kingdom, has a mandate to obtain information which may lead to the location of the remains of those killed and buried in secret by illegal organizations prior to 10 April 1998, as a result of the conflict in Northern Ireland. As at June 2016, the remains have been recovered of 10 of the 16 persons who disappeared.[12]

[11] See the latest report of the Secretary-General on the United Nations Interim Administration in Kosovo (S/2016/407), para. 44. See also A/HRC/30/38/Add.1.

[12] See www.iclvr.ie/en/ICLVR/Pages/TheDisappeared.

25. In 2013, the Security Council adopted resolution 2107 on the situation between Iraq and Kuwait, requesting the Secretary-General to report to the Security Council on efforts regarding the repatriation or return of all Kuwaiti and third-country nationals or their remains. The reports provide detailed accounts of progress regarding the determination of the fate and whereabouts of persons missing in Iraq and Kuwait (see, most recently, S/2016/87 and S/2016/372). The Tripartite Commission, chaired by ICRC, which was established in 1991 to resolve the fate of persons missing in connection with the 1990-1991 Gulf War, regularly meets and works on gravesites and on the identification of human remains. The Commission continues to study different options that could help locate new gravesites. According to information received from ICRC, the Commission has to date resolved 316 cases of missing persons, and 149 sets of human remains have been repatriated from Kuwait to Iraq. In its contribution to the present report, Kuwait reported that efforts had led to 317 sets of remains being brought from Iraq to Kuwait and to the identification and determination of the fate of 232 persons. In 2014 and 2015, however, no remains were found.

26. Joint efforts were undertaken by the authorities of Iran (Islamic Republic of) and Iraq to determine the fate of persons still unaccounted for in relation to the 1980-1988 war between the two countries, with ICRC chairing the tripartite committee that was formed in 2013. In 2014 and 2015, a total of 1,053 sets of human remains were recovered from Iraqi sites and handed over to the Iranian authorities and a total of 55 sets of human remains were transferred from the Islamic Republic of Iran to the Iraqi authorities.[13]

C. National institutions

27. National institutions, such as national commissions on missing persons, can play a crucial role in clarifying the fate of missing persons and providing support to the families of the missing. National information bureaux and grave registration services, as provided for in international humanitarian law, also fulfil this role. In the following paragraphs some recent developments are highlighted regarding the establishment of national institutions, on the basis of information received during the preparation of the present report.

28. Many families still do not know what happened to relatives who went missing during the Nagorno-Karabakh conflict. In December 2015, ICRC provided the parties concerned with an updated list containing the names of 4,496 people registered as missing by its delegations in Baku and Yerevan and its mission in the affected area. In that endeavour, ICRC worked closely with the Azeri and Armenian commissions on prisoners of war, hostages and missing people and with the families of missing persons. In its contribution for the present report, Azerbaijan stated that its State Commission on Prisoners of War, Hostages and Missing Persons had registered 3,803 persons as missing as at 23 June 2016. It also reported that, in collaboration with ICRC, the State Commission was collecting ante mortem data on missing persons and compiling them in centralized databases in order to facilitate future identification of human remains.

[13] See ICRC annual reports for 2014 and 2015.

29. In Bosnia and Herzegovina, a Missing Persons Institute was established in 2005 to address all aspects related to the issue of missing persons resulting from the conflicts in the former Yugoslavia. Over 19,496 persons had been identified in the western Balkans by March 2016, of whom over 14,767 related to Bosnia and Herzegovina. By March 2016, Bosnia and Herzegovina had accounted for two thirds of those missing in connection with the armed conflict, while 6,922 persons were still unaccounted for. Concerns have been expressed, however, that the work to exhume and identify remains has slowed down in recent years, with less information being made available on possible gravesites and reduced cooperation between government and justice institutions.

30. In the region of the former Yugoslavia, several agreements to intensify cooperation were concluded. Serbia reported that the Governments of Bosnia and Herzegovina and Serbia signed a protocol in November 2014 on cooperation in the search for missing persons. Montenegro reported that, in 2012, a protocol on cooperation was signed between the national commissions of Montenegro and Serbia and that, in October 2015, an agreement on cooperation was signed between the national commissions of Montenegro and Kosovo. In August 2014, the Declaration on the Role of the State in Addressing the Issue of Persons Missing as a Consequence of Armed Conflict and Human Rights Abuses of the International Commission on Missing Persons was signed by the Presidents of Bosnia and Herzegovina, Croatia, Montenegro and Serbia.

31. In its contribution for the present report, Ukraine reported that it had formed an Inter-agency Centre for Assistance in the Release of Captives and Hostages and the Search for Missing Persons under the Ukrainian Security Service. Ukraine further reported that the Inter-agency Centre's register, as at 11 April 2016, listed 3,021 persons as found and released, 115 as still being held by armed groups and 681 as considered missing. Ukraine stated that criminal proceedings had been initiated in 4,162 cases of missing or abducted persons (931 military and 3,229 civilian) in the Donetsk and Luhansk regions since the beginning of the security operation and that the overall number of missing persons stood at 4,478 (1,026 military and 3,452 civilian). A total of 2,578 missing persons (508 military and 2,070 civilian) had been found and 1,887 were still missing. Finally, Ukraine reported that 827 bodies were pending identification.[14] Both Ukraine and ICRC reported that they had discussed the creation of an independent/impartial coordination mechanism on the issue of missing persons in connection with the conflict in eastern Ukraine. Such a mechanism would greatly enhance the opportunities for the families of missing persons to seek and obtain information about the whereabouts of their relatives.

32. In Colombia, three mechanisms have been created to coordinate efforts to provide answers to the families of missing persons regarding the fate and whereabouts of their relatives, and to provide reparation: the National Commission on the Tracing of Disappeared Persons (Comisión de Búsqueda de Personas Desaparecidas), which also coordinates the national register of disappeared persons, the National Unit for Victim Support and Full Reparation (Unidad para la Atención y Reparación Integral a las Víctimas) and the National Centre for Historical

[14] See also OHCHR, report on the human rights situation in Ukraine, 16 February to 15 May 2016, available from www.ohchr.org/Documents/Countries/UA/Ukraine_14th_HRMMU_Report.pdf, paras. 26-28, also referring to missing persons in eastern Ukraine.

Memory. Since 2007, the inter-institutional round table on support for victims of enforced disappearances, chaired by the National Unit and composed of a number of State agencies, victims, human rights and forensic organizations, has continued to provide a platform for exchange between institutions and families at national level. A number of Colombian regions have created similar platforms at regional level. Importantly, at the end of 2015, as part of the peace negotiations between the Government and the Revolutionary Armed Forces of Colombia — People's Army, the parties reached an agreement that provides for the creation of an independent search unit for persons missing in connection with the armed conflict. In its contribution to the present report, Colombia also referred to a number of preliminary humanitarian measures that are to be implemented before the signing of the final peace agreement and that are designed to build trust between the parties in the peace process. These include measures on the search for and the location, identification and dignified return of the remains of missing persons in the context and as a result of the armed conflict.

33. In its contribution to the present report, Panama recalled that, in 2011, it had created a National Commission to continue the investigations into enforced disappearances that occurred between 1968 and 1989.

34. In Lebanon, in the context of the possible establishment of a national commission on missing persons, ICRC has registered detailed information on about 2,200 missing persons and is planning to start collecting biological reference samples from the relatives of missing persons as soon as its project is formally approved.

35. In its contribution to the present report, Kuwait reported that it had created a National Committee for Missing Persons and Prisoners of War Affairs, which, inter alia, had established a register of prisoners of war and missing persons, prepared files for such cases and established a genetic database to facilitate identification.

36. In Sri Lanka, in May 2016, the Government published a draft bill to create a dedicated Office of Missing Persons. The proposed Office will be a permanent structure that is intended to uncover the fate and whereabouts of the missing and to provide victims with access to legal, administrative and psychosocial services. Some concerns have been expressed regarding the draft law, including a lack of transparency during the drafting process and limited public consultation with victims and civil society.[15]

D. Truth-seeking mechanisms and processes

37. Truth-seeking mechanisms and processes also constitute valuable means by which to address the issue of missing persons, including through the clarification of the circumstances in which persons went missing. The following are examples of the way in which recent truth-seeking mechanisms have dealt with the question of missing persons, notably in the context of enforced disappearances.

38. In December 2014, the National Truth Commission of Brazil released its final report, in which it describes human rights violations committed between 1964 and

[15] See also United Nations High Commissioner for Human Rights, oral update at the Human Rights Council on 28 June 2016 (A/HRC/32/CRP.4).

1985. Enforced disappearance and concealment of victims' bodies are listed among the worst violations. The third volume of the report is dedicated to 434 individual victims, of whom 243 have disappeared (the bodies of 33 having later been found). In its report, the Commission called on the judiciary to end impunity for those involved in serious, systematic abuses. It also recommended the creation of an administrative body to continue gathering information and investigating cases, and to monitor activities aimed at locating, identifying and returning the remains of the disappeared to their families or other persons entitled to receive them for proper burial.

39. In March 2016, the Commission of Investigation on Enforced Disappeared Persons of Nepal became operational, with a mandate to "find out and record the truth and bring it out for the general public" regarding the fate of more than 1,000 people who remain unaccounted for following the 1996-2006 conflict. However, the enabling law of the Commission has been criticized for not meeting national constitutional guarantees or complying with international law. Despite a Supreme Court order to amend the law, no legislative or administrative action has been taken to address the concerns, including those related to the Commission's powers to recommend amnesties for gross human rights violations.[16]

40. In its contribution to the present report, the Office of the Ombudsperson of Ecuador reported that, following the final report of the Ecuadorian Truth Commission (which had found 17 cases of enforced disappearance) in 2010, a law on reparation for victims and the prosecution of serious human rights violations had been adopted in 2013. The law also provided for the creation of a programme for administrative reparation under the responsibility of the Ombudsperson.[17]

41. International commissions of inquiry and other investigations have made recommendations to relevant authorities regarding missing persons and victims of enforced disappearance. For example, the final report of the OHCHR investigation on Sri Lanka includes a thematic chapter on the issue, in which it was recommended that missing persons cases be transferred to a credible and independent institution developed in consultation with families of the disappeared (see A/HRC/30/CRP.2, paras. 386-531). In its final report, the commission of inquiry on human rights in Eritrea concluded that there was reasonable ground to believe that crimes against humanity, including enforced disappearances, had been committed in the country. The Commission noted that enforced disappearances continued to occur, but also that many of those subjected to enforced disappearance in the past remained unaccounted for and that female and child relatives of the disappeared often faced various forms of discrimination (see A/HRC/32/47, para. 48).[18] The Commission made a strong call for accountability.

[16] The Nepal Supreme Court, in order (069-WS-0057) of 26 February 2015, held that any provisions of the Act that serve to compromise its judicial role are invalid, including the power to grant amnesties. For more information, see the OHCHR technical note of 16 February 2016, in which is explained also that, in the absence of steps by the Government to ensure that the enabling law and procedures of the Commission are in compliance with the international legal obligations of Nepal, the United Nations is unable to provide support to the institution (available from www.ohchr.org/Documents/Countries/NP/Nepal_UN%20osition_supportTRC_COIDP_Feb2016.pdf).

[17] See also the 2015 thematic report of the Ombudsperson on missing persons in Ecuador, available from http://repositorio.dpe.gob.ec/bitstream/39000/601/1/IT-003-DPE-2015.pdf.

[18] See also A/HRC/32/CPR.1, A/HRC/29/42 and A/HRC/29/CPR.1.

42. Following its 2014 thematic report on enforced disappearances (see A/HRC/25/65, annex IV), the Independent International Commission of Inquiry on the Syrian Arab Republic continued to draw attention to the issue of missing persons in the country. It recommended that confidence-building measures in the political process take into account the needs and concerns of communities, including the tracking of missing persons (see A/HRC/31/68). It also recommended that the international community provide, as a matter of urgency and to build confidence at local level, the creation of a mechanism to register cases of missing persons, investigate their whereabouts and identify human remains, including those found in mass graves (see A/HRC/31/CRP.1, para. 110 (c)). Specific attention to the issue of missing persons in the Syrian Arab Republic is needed, including by ensuring full access for humanitarian and human rights actors.

E. Archives

43. The collection, protection and management of relevant information are essential for addressing the issue of missing persons. Archives are crucial to the exercise of individual rights, such as the right to the truth about the circumstances in which violations took place and, in the event of death and disappearance, about the victims' fate.[19] In resolution 69/184, the General Assembly invites States, national institutions and, as appropriate, intergovernmental, international and non-governmental organizations to ensure the development and proper management of archives pertaining to missing persons and unidentified remains in connection with armed conflict, as well as access to those archives in accordance with applicable laws and regulations.

44. In 2015, OHCHR published a Rule of Law Tool for Post-Conflict States on Archives.[20] The publication is aimed at providing guidance to United Nations field missions, transitional administrations and civil society on the management, reform, use and preservation of archives to help guarantee and enforce human rights, particularly the right to the truth. It explores the links between archives and the right to the truth and focuses on the means to strengthen archives through the identification of good practices for the management of different types of records and archives.

45. In September 2014, the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, in collaboration with ICRC and Swisspeace, convened a two-day workshop in Geneva on archives in the context of the right to know. In his report to the thirtieth session of the Human Rights Council, held in September 2015, the Special Rapporteur subsequently produced a set of general recommendations for truth commissions and archives, which are intended to contribute to the development of international standards (see A/HRC/30/42, annex).

46. Information collected in the investigation phases of international criminal tribunals can also be valuable for determining the fate and whereabouts of missing persons in specific cases. In that regard, ICRC reported that access to the archives of the International Criminal Tribunal for the Former Yugoslavia and other organizations working in Kosovo had resulted in 134 analytical reports since 2009,

[19] See the updated set of principles for the protection and promotion of human rights through action to combat impunity (E/CN.4/2005/102/Add.1), principles 3 and 4.

[20] Available from www.ohchr.org/Documents/Publications/HR_PUB_14_4_Archives_en.pdf.

which had helped clarify the fate and whereabouts of over 100 missing persons. In 2015, ICRC initiated similar research with respect to missing persons in Bosnia and Herzegovina.

V. Missing children

47. In resolution 69/184, the General Assembly requested States to pay the utmost attention to cases of children reported missing in connection with armed conflicts and to take appropriate measures to search for and identify those children and to reunite them with their families.

48. In its submission, the non-governmental organization the Ariel Foundation International emphasized that the prevention and resolution of cases of missing children requires a holistic approach that addresses various complex factors, including legal and societal. It also highlighted the importance of engaging children and affected families in the evaluation and formulation of responses and the need to address the lack of comprehensive and disaggregated data and research on missing children.

49. In El Salvador, the National Commission for Tracing Missing Children during the Internal Armed Conflict continued its work to clarify the fate of children whose whereabouts are still unknown. In its submission, El Salvador reported that, at the end of 2015, the Commission had registered a total of 275 cases of boys and girls who had disappeared during the armed conflict. The Commission had investigated 205 cases, reuniting 25 children with their relatives, with a further 9 children currently being processed. In 17 cases, investigation had confirmed the death of the child. In its submission, Argentina recalled that through the work of the "Abuelas de la Plaza de Mayo" and the National Commission for the Right to Identity (Comisión Nacional por el Derecho a la Identidad), 119 children who had disappeared in the context of the military dictatorship had been identified and reunited with their relatives.

VI. Criminal investigation and prosecution

50. Cases of missing persons may involve conduct that amounts to a criminal offence, and the perpetration of enforced disappearance is always a crime. Depending on the circumstances, such conduct may also amount to war crimes or crimes against humanity. States have an obligation, clearly established in international law, to investigate and prosecute such conduct. Moreover, criminal investigations and prosecutions can help victims to realize their right to the truth if the findings of such investigations and prosecutions are made available to interested parties.

51. In order to enable effective investigations and prosecutions, crimes under international law should be incorporated in national criminal law, and the necessary investigative and judicial mechanisms should be established. Several States (e.g. Greece, Senegal and Spain), in their contributions to the present report, highlighted that they had criminalized enforced disappearance in their domestic laws or were in the process of doing so. Niger noted that the lack of a specific crime of enforced disappearance in its national law had meant that some cases linked to the conflict with Boko Haram had to be prosecuted on charges of arbitrary arrest and detention instead.

52. It is important to ensure or strengthen the capacity of investigators and prosecutors' offices with respect to files pertaining to missing persons. El Salvador, in its contribution to the present report, stated that the Board of the Prosecutor Training School (*Escuela de Capacitación Fiscal*) had been instructed to incorporate and strengthen the curriculum components related to international humanitarian law and investigation techniques regarding enforced disappearances. In Mexico, the National Conference of Attorneys General adopted a protocol for the tracing of disappeared persons and the investigation of the crime of enforced disappearance in August 2015. It defines general principles and binding operating procedures for prosecutors, forensic experts and police responsible for investigating the crime of enforced disappearance. In December 2015, Mexico also created, under the Attorney General's office, an external tracing and investigation support mechanism, coordinated by its new Unit for investigations on crimes by and against migrants. The mechanism is in its early stages and protocols and guidelines have begun to be developed for its operation. In the Plurinational State of Bolivia, the Ministry of Justice, the Office of the Prosecutor and a university, Universidad Mayor de San Andrés, signed an agreement in October 2013 to investigate cases of enforced disappearances that took place between 1964 and 1982. The agreement will be in force until October 2016.

53. In its contribution for the present report, Algeria noted that it had amended its Criminal Procedure Code in 2015 to include a chapter on the protection of witnesses, experts and victims.

VII. Forensic recovery and identification of remains of missing persons

54. The recovery, identification and dignified management of bodies or human remains are essential. New methodologies and scientific advances are important in this regard. In resolution 69/184, the General Assembly invited States, national institutions and, as appropriate, intergovernmental, international and non-governmental organizations to further their engagement in order to follow forensic best practices regarding the prevention and resolution of cases of missing persons.

55. In his previous report, the Secretary-General highlighted and emphasized the importance of ensuring that forensic investigations into missing persons are up to international standards, not only because of the need to ensure the credibility of forensic institutions and practitioners, but also to avoid traumatizing families further. Several of the international standards and recommendations were recalled in the report (see A/69/293, paras. 49-51). In a resolution of 2014 (AG/RES.2864, para. 8), the Organization of American States invited States to support the training of forensic scientists in their countries, together with the implementation of forensic examinations consistent with internationally validated scientific standards and procedures.

56. ICRC reported that a growing number of forensic institutions and practitioners follow the standards and recommendations on forensic best practices as they apply to the prevention and resolution of cases of missing persons. Several countries have acquired the highly specialized forensic services required for such investigations, including in the fields of forensic anthropology and forensic DNA analysis. In addition to the countries listed in the previous report (see A/69/293, para. 52), these

include Canada, Kuwait and South Africa. ICRC has also been providing assistance and helping to build local forensic capacity, in Ecuador, Israel and the Occupied Palestinian Territory, the Syrian Arab Republic and Ukraine, in addition to the places listed in the previous report (ibid., para. 52). Such assistance ranges from technical support and advice and tailored training to the provision of equipment and tools and the promotion of communication, coordination and cooperation among forensic services for the improved prevention and investigation of the missing from armed conflict (and catastrophes), as well as the standardization of forensic procedures applicable to the search for and recovery, identification and management of human remains.

57. In 2015, Argentina, with support from ICRC, launched a manual on international best practices in forensic genetics applied to human rights and humanitarian investigations, including in the resolution of missing persons cases. In its contribution to the present report, Argentina also referred to its agreement with the Argentine Forensic Anthropology Team with the aim of implementing the Latin American Initiative for the Identification of Missing Persons, which began in 2007. It is currently constituted of three non-governmental organizations that apply forensic science to the investigation of human rights violations committed in Latin America: the Guatemalan Forensic Anthropology Foundation, the Peruvian Forensic Anthropology Team and the Argentine team. The system has to date managed to collect 9,800 samples, and 370 victims have been identified.

58. In Peru, ICRC and the Office of the Prosecutor signed an agreement in April 2015 to design and implement a plan to improve the work of the Institute of Forensic Medicine related to the tracing of persons who went missing during the 1980s and 1990s and the support for their families. In Honduras, ICRC is facilitating a working group on missing migrants for the authorities and civil society organizations to standardize the ante mortem form used by all participants and define a clear division of responsibilities in the tracing of missing migrants and support for their families.

59. In its contribution to the present report, Senegal noted that it is home to the first African private centre for diagnosis and research in molecular medicine, the Centre de Diagnostic et de Recherche en Médecine Moléculaire, which also carries out DNA tests for the identification of missing persons.

VIII. Legal status of missing persons and support for families

60. The suffering endured by the families of missing persons is often exacerbated by the multiple difficulties that families face as a direct result. Victims and the families of the missing should be placed at the centre of all action concerning the issue of missing persons and they should be enabled to participate in the design of and response to their multifaceted needs. Their rights to the truth, justice and an effective remedy should inform such responses. In resolution 69/184, States were called upon to take appropriate steps with regard to the legal situation of missing persons and the needs and accompaniment of their family members, with particular attention to the needs of women and children.

A. Understanding the needs of families

61. In cooperation with family associations, national societies of the International Red Cross and Red Crescent Movement, non-governmental organizations and academic and research institutions, ICRC continued to assess the needs of families of missing persons, on the basis of its guidelines for multidisciplinary family needs assessments. By 2015, such assessments pertaining to Central America (El Salvador, Guatemala, Honduras and Mexico), Colombia, Iraq, Lebanon, Libya, Peru, Senegal, Sri Lanka, Tajikistan and Uganda had been concluded. In some of those locations, the assessment also relates to the needs of families of missing migrants.[21] The aim of the assessments is to ensure a contextualized and comprehensive understanding of the multifaceted needs of families, and determine the existing capacity to respond and the level of additional assistance needed. ICRC also engages in confidential dialogues with the authorities concerned regarding the needs identified and appropriate recommendations.

B. Addressing the needs of families

62. The families of missing persons have many needs, including the need to know what happened; the need for recognition and commemoration; the need for economic, financial, psychological and psychosocial support; the need for protection against security threats; and the need for access to justice and effective remedy. Furthermore, as a result of gaps in legislation and administrative obstacles, families often lack access to social benefits and pensions and are prevented from exercising their rights under property and family law. Diverse needs and the multidimensional impact of the disappearance require a holistic response.

63. In 2013, ICRC published "Accompanying the families of missing persons: A practical handbook",[22] setting out its approach to addressing the needs of families of the missing. The "accompaniment" approach aims to strengthen the abilities of individuals and families to deal with difficulties related to the disappearance of their relatives and to help them reacquire a healthy social life and emotional well-being. It attempts to address every aspect of the difficulties faced by families by involving professionals from different areas (e.g. forensic, legal, health, social work, economic security, mental health and psychological support) and community members. The response envisages interventions at all levels: families of missing persons and community, local and national authorities. The approach is needs-based and participatory, following the premise that the families of missing persons know their needs better than anyone else. ICRC has worked with this approach in several contexts, including in Colombia, Mexico and Central America, Peru and Uganda. Internal evaluations of programmes in Armenia, Georgia, Nagorno-Karabakh, Nepal and Uganda have confirmed that a holistic response to the various needs of family members was a key aspect in achieving a positive impact.

[21] In its contribution for the present report, Guatemala drew attention to the plight of families of missing migrants, also referring to the Caravan of Mothers of Missing Migrants (Caravana de Madres de Migrantes Desaparecidos), held in November 2014 in Guatemala to express concern about the rates of disappearances of migrants in Central America and Mexico.

[22] Available from https://shop.icrc.org/accompagner-les-familles-des-personnes-portees-disparues-2314.html.

C. Legal situation of missing persons

64. National law should clarify the legal situation of missing persons, including through provisions for the person to be declared absent or missing so that the families of missing persons become eligible for social and financial benefits, without forcing them to declare the missing relative dead.

65. Several States have, either by amending existing national legislation or through specific provisional decrees, granted victims, including the families of missing persons, specific social and financial benefits. These include pensions for the families of missing soldiers, reduced health care and tuition fees, child allowances, food assistance, loans and interim relief. In its contribution, Kuwait explained that its National Committee for Missing Persons and Prisoners of War Affairs had also established a social services office to provide social and psychological services to the families of the missing, including, inter alia, monthly allowances, priority government housing and debt waivers.

IX. Conclusions and recommendations

66. **While, in its resolution 69/184, the General Assembly focuses primarily on the issue of missing persons in connection with armed conflict, I urge Member States also to consider the issue of missing persons in other contexts, including situations of violence, insecurity, organized crime, disaster and migration.**

67. **I commend Member States for their efforts in addressing the issue of missing persons as a consequence of armed conflict. However, I remain alarmed at the reported numbers of missing persons and the tremendous suffering that each instance in which a person goes missing causes to the direct victim and his or her family.**

68. **All Member States are urged to keep this multifaceted issue high on the agenda and to redouble their efforts to address it, in their own countries, in their regions and at the global level, in a spirit of cooperation. Responses need to be depoliticized, strongly focused on both prevention and accountability, and have the rights, needs and concerns of the missing and members of their families — notably their right to the truth — at the centre.**

69. **States are encouraged to take steps to assess and understand the many needs of missing persons and their families, including from a human rights perspective. Such assessment should drive the formulation of appropriate responses, with special consideration for the specific vulnerabilities faced by women, children, migrants, refugees, internally displaced persons and other groups. The approach to addressing the issue of missing persons must be not only needs-based but also participatory and multidisciplinary.**

70. **It remains of critical importance that States put in place the appropriate legislative and institutional framework to effectively deal with the issue of missing persons. Such a framework should specifically address the legal and practical difficulties that missing persons and their families experience.**

71. **I strongly encourage all States that have not yet become parties to the International Convention for the Protection of All Persons from Enforced Disappearance to take the necessary measures to do so, to incorporate its provisions into national law and to ensure full implementation of those**

provisions by the relevant authorities. I also call on all Member States to lend their full cooperation to the Committee on Enforced Disappearances and the Working Group on Enforced or Involuntary Disappearances.

72. In the aftermath of armed conflict, States should actively engage in processes to address cases of missing persons and minimize their consequences, including by establishing adequate processes to locate, identify and repatriate the missing to their families. In that regard, all former parties to conflicts currently engaged in such efforts are called upon to step up their efforts and cooperation as time may affect the availability of information.

73. The issue of missing persons must also be considered in the context of peacebuilding and transitional justice processes. Humanitarian efforts to locate, identify and return missing persons, as well as accountability and transitional justice processes, should be mutually reinforcing. Linkages between such efforts should be considered, with full respect for the principles of confidentiality, protection and informed consent.

74. The issue of missing children in connection with armed conflict continues to require greater attention, including through focused research and improved collection of comprehensive and disaggregated data.

75. States are encouraged to continue to develop local forensic capacity, in line with applicable forensic best practices and international standards. Building well-trained, well-resourced and independent forensic capacities is essential for ensuring credible investigations into cases of missing persons and the identification of human remains. Regional coordination and cooperation among forensic institutions and practitioners should be promoted and supported.

76. Considering the importance of the collection, protection and management of information for addressing the issue of missing persons and the realization of victims' right to the truth, States are encouraged to ensure the preservation of and access to archives. Such access should be as wide as possible, but consistent with considerations of privacy and protection.

77. Greater efforts are needed to ensure accountability for gross human rights violations or serious violations of international humanitarian law which have led to persons going missing. Both as a preventive measure and as a measure of redress for victims, the importance of ensuring accountability and effective remedy, including reparations, cannot be overestimated. Where national mechanisms are insufficient or inadequate, Member States should ensure that appropriate international fact-finding and accountability mechanisms are created and called upon to intervene. These mechanisms should be provided with adequate resources, and their recommendations should be followed up promptly and effectively.